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6 and DISABILITY RIGHTS

ENFORCEMENT, EDUCATION,

7 SERVICES: HELPING YOU

HELP OTHERS

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JAN 13 2009

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

12 CRAIG YATES, an individual; and )  
 13 DISABILITY RIGHTS, ENFORCEMENT, )  
 14 EDUCATION, SERVICES:HELPING YOU )  
 HELP OTHERS, a California public benefit )  
 corporation, )

15 Plaintiffs, )

16 v. )

17 MICHAEL WURCHE; and PHILOMENA )  
 18 WURCHE, as individuals, )

19 Defendants )

CASE NO. 09  
Civil Rights

09

0154

**COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES:**

**1<sup>st</sup> CAUSE OF ACTION:** For Denial of Access  
 by a Public Accommodation in Violation of the  
 Americans with Disabilities Act of 1990 (42  
 U.S.C. §12101, *et seq.*)

**2<sup>nd</sup> CAUSE OF ACTION:** For Denial of Full  
 and Equal Access in Violation of California  
 Civil Code §§54, 54.1 and 54.3

**3<sup>rd</sup> CAUSE OF ACTION:** For Denial of  
 Accessible Sanitary Facilities in Violation of  
 California Health & Safety Code §19955, *et seq.*

**4<sup>th</sup> CAUSE OF ACTION:** For Denial of  
 Access to Full and Equal Accommodations,  
 Advantages, Facilities, Privileges and/or  
 Services in Violation of California Civil Code  
 §51, *et seq.* (The Unruh Civil Rights Act)

**DEMAND FOR JURY**

1 Plaintiffs CRAIG YATES, an individual; and DISABILITY RIGHTS, ENFORCEMENT,  
2 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
3 corporation (hereinafter sometimes referred to as "DREES"), complain of defendants  
4 MICHAEL WURCHE; and PHILOMENA WURCHE, and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical  
7 disabilities, of which class plaintiff CRAIG YATES and the membership of DREES are  
8 members, for failure to remove architectural barriers structural in nature at defendants' Shanghai  
9 Chinese Garden restaurant, a place of public accommodation, thereby discriminatorily denying  
10 plaintiffs and the class of other similarly situated persons with physical disabilities access to, the  
11 full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities,  
12 services, and accommodations thereof. Plaintiffs seek injunctive relief and damages pursuant to  
13 the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code  
14 §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about  
16 November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008,  
17 November 28, 2008, December 8, 2008, December 26, 2008 and January 2, 2009, was an invitee,  
18 guest, patron, customer at defendants' Shanghai Garden Chinese Restaurant, in the City of  
19 Novato, California. At said time and place, defendants failed to provide proper legal access to  
20 the restaurant, which is a "public accommodation" and/or a "public facility" including, but not  
21 limited to the entry, men's restroom and women's restroom. The denial of access was in  
22 violation of both federal and California legal requirements, and plaintiff CRAIG YATES  
23 suffered violation of his civil rights to full and equal access, and was embarrassed and  
24 humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations  
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
 8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
 10 founded on the facts that the real property which is the subject of this action is located at/near  
 11 471 Entrada Drive, in the City of Novato, County of Marin, State of California, and that  
 12 plaintiffs' causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically  
 15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically  
 16 disabled", "physically handicapped" and "person with physical disabilities" are used  
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but  
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically  
 19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other  
 20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff  
 21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California  
 22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a  
 23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that  
 24 portion of the public whose rights are protected by the provisions of Health & Safety Code  
 25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped  
 26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the  
 27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.  
 28 §12101, *et seq.*

1           6.       Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:  
2       HELPING YOU HELP OTHERS (“DREES”) is a nonprofit (501(c)(3)) organization that works  
3       with persons with disabilities to empower them to be independent in American society. DREES  
4       accomplishes its goals and purposes through education on disability issues, enforcement of the  
5       rights of persons with disabilities, and the provision of services to persons with disabilities, the  
6       general public, public agencies and the private business sector. DREES brings this action on  
7       behalf of its members, many of whom are persons with physical disabilities and whom have  
8       standing in their right to bring this action.

9           7.       That members of DREES, like plaintiff CRAIG YATES, will or have been guests  
10       and invitees at the subject Shanghai Chinese Garden restaurant, and that the interests of plaintiff  
11       DREES in removing architectural barriers at the subject Shanghai Garden restaurant advance the  
12       purposes of DREES to assure that all public accommodations, including the subject restaurant,  
13       are accessible to independent use by mobility-impaired persons. The relief sought by plaintiff  
14       DREES as alleged herein is purely statutory in nature.

15          8.       Defendants MICHAEL WURCHE; and PHILOMENA WURCHE (hereinafter  
16       alternatively collectively referred to as “defendants”) are the owners and operators, lessors and/or  
17       lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as  
18       Shanghai Chinese Garden restaurant, located at/near 471 Entrada Drive, Novato, California, or of  
19       the building and/or buildings which constitute said public accommodation.

20          9.       At all times relevant to this complaint, defendants MICHAEL WURCHE; and  
21       PHILOMENA WURCHE, as individuals, own and operate in joint venture the subject Shanghai  
22       Chinese Garden restaurant as a public accommodation. This business is open to the general  
23       public and conducts business therein. The business is a “public accommodation” or “public  
24       facility” subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health  
25       and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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10. At all times relevant to this complaint, defendants MICHAEL WURCHE; and PHILOMENA WURCHE, are jointly and severally responsible to identify and remove architectural barriers at the subject Shanghai Chinese Garden restaurant pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

**§ 36.201 General**

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

**PRELIMINARY FACTUAL ALLEGATIONS:**

11. The Shanghai Garden, is a restaurant, located at/near 471 Entrada Drive, Novato, California. The Shanghai Chinese Garden restaurant, its entry, men's restroom, women's restroom, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions", each of which has subjected the restaurant and each of its facilities, its entry, men's restroom and women's restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

12. At all times stated herein, plaintiff CRAIG YATES was a member of DREES.

13. At all times referred to herein and continuing to the present time, defendants, and each of them, advertised, publicized and held out the Shanghai Chinese Garden restaurant as being handicapped accessible and handicapped usable.

14. On or about November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008, November 28, 2008, December 8, 2008, December 26, 2008 and January 2, 2009, plaintiff CRAIG YATES was an invitee and guest at the subject Shanghai Chinese Garden restaurant, for purposes of having food and/or beverages.

1           15.     On or about November 4, 2008, plaintiff CRAIG YATES struggled with the entry  
2 door into the subject restaurant. After having his meal, plaintiff CRAIG YATES had need to use  
3 an accessible restroom. Plaintiff CRAIG YATES powered to the men's restroom and could not  
4 gain access.

5           16.     On or about November 9, 2008, plaintiff CRAIG YATES returned to the  
6 Shanghai Chinese Garden restaurant and encountered the same architectural barriers:

- 7                 •       a non-compliant entry door; and
- 8                 •       a inaccessible restroom.

9           17.     On this occasion, plaintiff CRAIG YATES attempted to use the women's  
10 restroom but could not gain access.

11           18.     On or about November 13, 2008, plaintiff CRAIG YATES wrote a detailed letter  
12 to both the landlord and the tenant explaining the nature of the problem with the restrooms.  
13 Plaintiff CRAIG YATES provided a diagram of what could be done to provide for a usable  
14 accessible restroom.

15           19.     Subsequently, on or about November 19, 2008, November 22, 2008 and  
16 November 28, 2008, plaintiff CRAIG YATES dined at Shanghai Chinese Garden restaurant and  
17 encountered the same architectural barriers to wit:

- 18                 •       non-compliant entrance; and
- 19                 •       inaccessible restroom.

20           20.     On or about December 8, 2008, plaintiff CRAIG YATES returned to Shanghai  
21 Garden restaurant for a take out order. While waiting for his order, an older Chinese woman  
22 approached him with a phone in her hand. It appeared she was speaking to someone. In  
23 substance, she asked him to speak to her son, which he did. The alleged son stated in substance:  
24 "We received your letter and the Health Department, o'kayed the use of the restrooms." Plaintiff  
25 CRAIG YATES replied in substance: "The Health Department does not monitor or make  
26 decisions about accessible restrooms." To this, the alleged son in substance stated: "The other  
27 people in wheelchairs used the restrooms and the problem must be that your wheelchair (plaintiff  
28 CRAIG YATES's) is too big."

1 Plaintiff CRAIG YATES inquired in substance, Whether he, (the son) spoke to the landlord  
2 about plaintiff CRAIG YATES's letter. The alleged son stated in substance, that he spoke with  
3 the landlord's management and was told that the restrooms were approved by the Health  
4 Department. Plaintiff CRAIG YATES responded that he, (the son) should have management fix  
5 it.

6 21. On or about December 26, 2008, plaintiff CRAIG YATES once again patronized  
7 the Shanghai Chinese Garden restaurant. No remedial work was being undertaken.

8 22. Plaintiff CRAIG YATES encountered the same architectural barriers:

- 9 • non-compliant entrance; and
- 10 • no accessible restrooms.

11 23. On or about January 2, 2009, plaintiff CRAIG YATES returned to the Shanghai  
12 Garden Restaurant. Plaintiff encountered all the referenced architectural barriers stated herein.

13 24. Therefore, at said times and place, plaintiff CRAIG YATES,  
14 person with a disability, encountered the following inaccessible elements of the subject  
15 Shanghai Garden Chinese Restaurant which constituted architectural barriers and a denial of the  
16 proper and legally-required access to a public accommodation to persons with physical  
17 disabilities including, but not limited to:

- 18 a. lack of an accessible entrance;
- 19 b. lack of a handicapped-accessible women's public restroom;
- 20 c. lack of a handicapped-accessible men's public restroom; and
- 21 d. On personal knowledge, information and belief, other public facilities and  
22 elements too numerous to list were improperly inaccessible for use by  
persons with physical disabilities.

23 25. At all times stated herein, the existence of architectural barriers at defendants'  
24 place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
25 with the Americans with Disabilities Act of 1990 either then, now or in the future.

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1        26. On or about November 13, 2008, defendant(s) were sent two (2) letters by or on  
2 behalf of plaintiff CRAIG YATES advising of the existence of architectural barriers, requesting a  
3 response within 14 days and requesting remedial measures be undertaken within 90 days or an  
4 explanation of why the time limit set could not be met and/or extenuating circumstances. The  
5 response from the tenant was that the restrooms were approved by the Health Department and  
6 nothing more needed to be done. Said letters are attached hereto collectively as exhibit "A" and  
7 incorporated by reference as though fully set forth herein.

8        27. As a legal result of defendants MICHAEL WURCHE; and PHILOMENA  
9 WURCHE's failure to act as a reasonable and prudent public accommodation in identifying,  
10 removing or creating architectural barriers, policies, practices and procedures that denied access to  
11 plaintiffs and other persons with disabilities, plaintiffs suffered the damages as alleged herein.

12        28. As a further legal result of the actions and failure to act of defendants, and as a  
13 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
14 herein, plaintiffs were denied their civil rights to full and equal access to public facilities. Plaintiff  
15 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical  
16 disabilities to full and equal access to public facilities.

17        29. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
18 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
19 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a  
20 person with physical disabilities being denied access, all to his damages as prayed hereinafter in  
21 an amount within the jurisdiction of this court. No claim is being made for mental and emotional  
22 distress over and above that usually associated with the discrimination and physical injuries  
23 claimed, and no expert testimony regarding this usual mental and emotional distress will be  
24 presented at trial in support of the claim for damages.

25        30. Defendants', and each of their, failure to remove the architectural barriers  
26 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public  
27 accommodation, and continues to create continuous and repeated exposure to substantially the  
28 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.



1           31. Plaintiff CRAIG YATES and the membership of DREES were denied their rights  
2 to equal access to a public facility by defendants MICHAEL WURCHE; and PHILOMENA  
3 WURCHE, because defendants MICHAEL WURCHE; and PHILOMENA WURCHE,  
4 maintained a restaurant without access for persons with physical disabilities to its facilities,  
5 including but not limited to the entry, men's restroom, women's restroom, and other public areas  
6 as stated herein, and continue to the date of filing this complaint to deny equal access to plaintiffs  
7 and other persons with physical disabilities in these and other ways.

8           32. On information and belief, construction alterations carried out by defendants have  
9 also triggered access requirements under both California law and the Americans with Disabilities  
10 Act of 1990.

11           33. Plaintiffs, as described herein below, seek injunctive relief to require the Shanghai  
12 Chinese Garden restaurant to be made accessible to meet the requirements of both California law  
13 and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as  
14 defendant operates the restaurant as a public facility.

15           34. Plaintiffs seek damages for violation of their civil rights on November 4, 2008,  
16 November 9, 2008, November 19, 2008, November 22, 2008, November 28, 2008, December 8,  
17 2008, December 26, 2008 and January 2, 2009, and they seek statutory damages of not less than  
18 \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for  
19 each day after his visit that the trier of fact (court/jury) determines was the date that some or all  
20 remedial work should have been completed under the standard that the landlord and tenant had an  
21 ongoing duty to identify and remove architectural barriers where it was readily achievable to do  
22 so, which deterred plaintiff CRAIG YATES from returning to the subject public accommodation  
23 because of his knowledge and/or belief that neither some or all architectural barriers had been  
24 removed and that said premises remains inaccessible to persons with disabilities whether a  
25 wheelchair user or otherwise.

26           35. On information and belief, defendant has been negligent in their affirmative duty to  
27 identify the architectural barriers complained of herein and negligent in the removal of some or all  
28 of said barriers.

1           36.     Because of defendants' violations, plaintiffs and other persons with physical  
2 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
3 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
4 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
5 other accessibility law as plead herein. Plaintiffs seek an order from this court compelling  
6 defendants to make the subject restaurant accessible to persons with disabilities.

7           37.     On information and belief, defendants have intentionally undertaken to modify and  
8 alter existing building(s), and have failed to make them comply with accessibility requirements  
9 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each  
10 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit  
11 and injuries, indicate actual and implied malice toward plaintiffs, and despicable conduct carried  
12 out by defendants, and each of them, with a willful and conscious disregard for the rights and  
13 safety of plaintiffs and other similarly situated persons, and justify a trebling of damages as  
14 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of  
15 defendants, and each of them, to other operators and landlords of other restaurants, strip malls and  
16 other public facilities, and to punish defendants and to carry out the purposes of the Civil Code  
17 §§ 51, 51.5 and 54.

18           38.     Plaintiffs are informed and believe and therefore allege that defendants  
19 MICHAEL WURCHE; and PHILOMENA WURCHE, and each of them, caused the subject  
20 building(s) which constitute the Shanghai Chinese Garden restaurant to be constructed, altered  
21 and maintained in such a manner that persons with physical disabilities were denied full and equal  
22 access to, within and throughout said building(s) of the restaurant and were denied full and equal  
23 use of said public facilities. Furthermore, on information and belief, defendants have continued to  
24 maintain and operate said restaurant and/or its building(s) in such conditions up to the present  
25 time, despite actual and constructive notice to such defendants that the configuration of the  
26 subject restaurant and/or its building(s) is in violation of the civil rights of persons with physical  
27 disabilities, such as plaintiff CRAIG YATES, the membership of plaintiff DREES and the  
28 disability community which DREES serves. Such construction, modification, ownership,

1 operation, maintenance and practices of such public facilities are in violation of Civil Code §§51,  
2 51.5 and 54, Health and Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

3 39. On personal knowledge, information and belief, the basis of defendants' actual and  
4 constructive notice that the physical configuration of the facilities including, but not limited to,  
5 architectural barriers constituting the Shanghai Garden restaurant and/or building(s) was in  
6 violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes, but is  
7 not limited to, communications with invitees and guests, plaintiff CRAIG YATES himself,  
8 owners of other restaurants, hotels, motels - and businesses, notices they obtained from  
9 governmental agencies upon modification, improvement, or substantial repair of the subject  
10 premises and other properties owned by these defendants, newspaper articles and trade  
11 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public  
12 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and  
13 other similar information. Defendants' failure, under state and federal law, to make the Shanghai  
14 Garden restaurant accessible is further evidence of defendants' conscious disregard for the rights  
15 of plaintiff and other similarly situated persons with disabilities. Despite being informed of such  
16 effect on plaintiff and other persons with physical disabilities due to the lack of accessible  
17 facilities, defendants, and each of them, knowingly and willfully refused to take any steps to  
18 rectify the situation and to provide full and equal access for plaintiffs and other persons with  
19 physical disabilities to the restaurant. Said defendants, and each of them, have continued such  
20 practices, in conscious disregard for the rights of plaintiffs and other persons with physical  
21 disabilities, up to the date of filing of this complaint, and continuing thereon. Defendant had  
22 further actual knowledge of the architectural barriers referred to herein by virtue of the demand  
23 letter addressed to the defendant and served concurrently with the summons and complaint. Said  
24 conduct, with knowledge of the effect it was and is having on plaintiffs and other persons with  
25 physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety  
26 of plaintiffs and of other similarly situated persons, justifying the imposition of treble damages per  
27 Civil Code §§52 and 54.3.

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40. Plaintiff CRAIG YATES and plaintiff DREES, on behalf of its membership and the disability community which it serves, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

**I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

(On behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants MICHAEL WURCHE; and PHILOMENA WURCHE, as individuals, inclusive)  
(42 U.S.C. §12101, *et seq.*)

41. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 40 of this complaint.

42. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

43. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.



1           44.     As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
 2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
 3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
 4 accommodations identified for purposes of this title was:

5                   (7)     PUBLIC ACCOMMODATION - The following private  
 6 entities are considered public accommodations for purposes of this  
 title, if the operations of such entities affect commerce -

7                             (B) a restaurant, bar or other establishment serving food or drink.

8                             42 U.S.C. §12181(7)(B)

9           45.     Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against  
 10 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
 11 privileges, advantages, or accommodations of any place of public accommodation by any person  
 12 who owns, leases, or leases to, or operates a place of public accommodation."

13           46.     The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 14 42 U.S.C. §12182(b)(2)(a) are:

15                   (I)     the imposition or application of eligibility criteria  
 16 that screen out or tend to screen out an individual with a disability  
 17 or any class of individuals with disabilities from fully and equally  
 18 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

19                   (ii)    a failure to make reasonable modifications in  
 20 policies, practices, or procedures, when such modifications are  
 21 necessary to afford such goods, services, facilities, privileges,  
 22 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

23                   (iii)   a failure to take such steps as may be necessary to  
 24 ensure that no individual with a disability is excluded, denied  
 25 services, segregated or otherwise treated differently than other  
 26 individuals because of the absence of auxiliary aids and services,  
 27 unless the entity can demonstrate that taking such steps would  
 28 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

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(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiffs' rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

47. The removal of the barriers complained of by plaintiffs as hereinabove alleged was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of Shanghai Chinese Garden restaurant pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

48. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that plaintiffs complain of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

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1           49.     On information and belief, construction work on, and modifications of, the subject  
2 building(s) of Shanghai Garden restaurant occurred after the compliance date for the Americans  
3 with Disabilities Act, January 26, 1992, independently triggering access requirements under Title  
4 III of the ADA.

5           50.     Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
6 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
7 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the  
8 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs  
9 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from  
10 returning to or making use of the public facilities complained of herein so long as the premises  
11 and defendants' policies bar full and equal use by persons with physical disabilities.

12           51.     42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a  
13 disability to engage in a futile gesture if such person has actual notice that a person or  
14 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
15 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about  
16 January 2, 2009, but on information and belief, alleges that defendants have continued to violate  
17 the law and deny the rights of plaintiffs and of other persons with physical disabilities to access  
18 this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of  
19 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such  
20 facilities readily accessible to and usable by individuals with disabilities to the extent required by  
21 this title."

22           52.     Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil Rights  
23 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
24 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
25 injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned upon being  
26 deemed to be the prevailing party.

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Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation, and Against Defendants MICHAEL WURCHE; and PHILOMENA WURCHE, as individuals, inclusive)  
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

53. Plaintiffs replead and incorporate by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 52 of this complaint.

54. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

55. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

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1 56. California Civil Code §54.1 further provides that a violation of the Americans with  
2 Disabilities Act of 1990 constitutes a violation of section 54.1:

3 (d) A violation of the right of an individual under the  
4 Americans with Disabilities Act of 1990 (Public Law 101-336) also  
5 constitutes a violation of this section, and nothing in this section  
6 shall be construed to limit the access of any person in violation of  
7 that act.

8 Civil Code §54.1(d)

9 57. Plaintiff CRAIG YATES and the membership of plaintiff DREES are persons  
10 within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by  
11 the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific  
12 architectural barrier which defendants knowingly and willfully fail and refuse to remove  
13 constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiffs have been and  
14 continue to be denied full and equal access to defendants' Shanghai Chinese Garden restaurant.  
15 As a legal result, plaintiffs are entitled to seek damages pursuant to a court or jury determination,  
16 in accordance with California Civil Code §54.3(a) for each day on which they visited or have been  
17 deterred from visiting the restaurant because of their knowledge and belief that the restaurant is  
18 inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

19 Any person or persons, firm or corporation, who denies or interferes  
20 with admittance to or enjoyment of the public facilities as specified  
21 in Sections 54 and 54.1 or otherwise interferes with the rights of an  
22 individual with a disability under Sections 54, 54.1 and 54.2 is  
23 liable for each offense for the actual damages and any amount as  
24 may be determined by a jury, or the court sitting without a jury, up  
25 to a maximum of three times the amount of actual damages but in  
26 no case less than . . . one thousand dollars (\$1,000) and . . .  
27 attorney's fees as may be determined by the court in addition  
28 thereto, suffered by any person denied any of the rights provided in  
Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

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58. On or about November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008, November 28, 2008, December 8, 2008, December 26, 2008 and January 2, 2009, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that plaintiff CRAIG YATES was denied access to the entry, men's restroom, women's restroom and other public facilities as stated herein at the Shanghai Chinese Garden restaurant and on the basis that plaintiff CRAIG YATES was a person with physical disabilities.

59. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

60. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment and worry, all of which are expectedly and naturally associated with a denial of access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole basis that plaintiffs are persons or an entity that represents persons with physical disabilities and unable, because of the architectural barriers created and maintained by the defendants in violation of the subject laws, to use the public facilities hereinabove described on a full and equal basis as other persons.

61. Plaintiffs have been damaged by defendants', and each of their, wrongful conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiffs' rights as persons or an entity that represents persons with physical disabilities on or about November 4, 2008, November 9, 2008, November 19, 2008, November 22, 2008, November 28, 2008, December 8, 2008, December 26, 2008 and January 2, 2009, and on a continuing basis since then, including statutory damages, a trebling of all of actual damages, general and special damages available pursuant to §54.3 of the Civil Code according to proof.

62. As a result of defendants', and each of their, acts and omissions in this regard, plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical

disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions of Civil Code §54.3, plaintiffs therefore will seek recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to plaintiffs, but also to compel the defendants to make their facilities accessible to all members of the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

**III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET. SEQ.**  
 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit corporation and Against Defendants MICHAEL WURCHE; and PHILOMENA WURCHE, as individuals, inclusive)  
 (Health & Safety Code §19955, *et seq.*)

63. Plaintiffs plead and incorporate by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 62 of this complaint.

64. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

65. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code . . . ." Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all public accommodations constructed or altered after that date. On information and belief, portions of the Shanghai Chinese Garden restaurant and/or of the building(s) were constructed and/or altered after July 1, 1970, and substantial portions of the restaurant and/or the building(s) had



1 alterations, structural repairs, and/or additions made to such public accommodations after July 1,  
2 1970, thereby requiring said restaurant and/or building to be subject to the requirements of Part  
3 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or  
4 additions per Health & Safety Code §19959.

5 66. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State  
6 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,  
7 1982, Title 24 of the California Building Standards Code adopted the California State Architect's  
8 Regulations and these regulations must be complied with as to any alterations and/or  
9 modifications of the restaurant and/or the building(s) occurring after that date. Construction  
10 changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant  
11 to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961.  
12 On information and belief, at the time of the construction and modification of said building, all  
13 buildings and facilities covered were required to conform to each of the standards and  
14 specifications described in the American Standards Association Specifications and/or those  
15 contained in Title 24 of the California Building Standards Code.

16 67. Restaurants such as the Shanghai Chinese Garden restaurant are "public  
17 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq.*

18 68. As a result of the actions and failure to act of defendants, and as a result of the  
19 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were  
20 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of plaintiffs'  
21 civil rights and plaintiffs' rights as persons with physical disabilities to full and equal access to  
22 public facilities.

23 69. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
24 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce  
25 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with  
26 physical disabilities and prohibiting discrimination against the persons with physical disabilities,  
27 and to take such action both in plaintiffs' own interests and in order to enforce an important right  
28 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all



1 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
 2 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953  
 3 and Civil Code §§54.3 and/or in the alternative, plaintiffs will seek attorneys' fees, costs and  
 4 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).  
 5 Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

6 70. Plaintiffs seek injunctive relief for an order compelling defendants, and each of  
 7 them, to make the subject place of public accommodation readily accessible to and usable by  
 8 persons with disabilities.

9 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

10 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**  
 11 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**  
 12 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**  
 13 **SEO. (THE UNRUH CIVIL RIGHTS ACT)**  
 14 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS, ENFORCEMENT,  
 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 corporation, and Against Defendants MICHAEL WURCHE; and PHILOMENA  
 WURCHE, as individuals, inclusive)  
 (Civil Code §51, 51.5)

15 71. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the  
 16 allegations contained in paragraphs 1 through 70 of this complaint.

17 72. Defendants' actions and omissions and failure to act as a reasonable and prudent  
 18 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
 19 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
 20 Unruh Act provides:

21 This section shall be known, and may be cited, as the Unruh  
 22 Civil Rights Act.

23 All persons within the jurisdiction of this state are free and  
 24 equal, and no matter what their sex, race, color, religion, ancestry,  
 25 national origin, or **disability** are entitled to the full and equal  
 accommodations, advantages, facilities, privileges, or services in all  
 business establishments of every kind whatsoever.

26 This section shall not be construed to confer any right or  
 27 privilege on a person that is conditioned or limited by law or that is  
 applicable alike to persons of every sex, color, race, religion,  
 ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any  
 2 construction, alteration, repair, structural or otherwise, or  
 3 modification of any sort whatsoever, beyond that construction,  
 4 alteration, repair, or modification that is otherwise required by other  
 5 provisions of law, to any new or existing establishment, facility,  
 6 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict, or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other . . . laws.

7 A violation of the right of any individual under the  
 8 Americans with Disabilities Act of 1990 (Public Law 101-336) shall  
 also constitute a violation of this section.

9 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 10 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the  
 11 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 12 failing to act to identify and remove barriers can be construed as a “negligent per se” act of  
 13 defendants, and each of them.

14 73. The acts and omissions of defendants stated herein are discriminatory in nature and  
 15 in violation of Civil Code §51.5:

16 No business establishment of any kind whatsoever shall  
 17 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 18 or trade with any person in this state because of the race, creed,  
 19 religion, color, national origin, sex, or **disability** of the person or of  
 the person’s partners, members, stockholders, directors, officers,  
 managers, superintendents, agents, employees, business associates,  
 suppliers, or customers.

20 As used in this section, “person” includes any person, firm  
 21 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

22 Nothing in this section shall be construed to require any  
 23 construction, alteration, repair, structural or otherwise, or  
 24 modification of any sort whatsoever, beyond that construction,  
 25 alteration, repair or modification that is otherwise required by other  
 26 provisions of law, to any new or existing establishment, facility,  
 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

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74. Defendants' acts and omissions as specified have denied to plaintiffs full and equal accommodations, advantages, facilities, privileges and services in a business establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section." Plaintiffs accordingly incorporate the entirety of their above cause of action for violation of the Americans with Disabilities Act at §41, *et seq.*, as if replied herein.

75. As a legal result of the violation of plaintiff CRAIG YATES's civil rights as hereinabove described, plaintiff CRAIG YATES has suffered statutory and general damages.

76. Further, plaintiff CRAIG YATES suffered emotional distress (all to plaintiff's damage according to proof, and incurred reasonable attorneys' fees and costs). Plaintiffs CRAIG YATES and DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiffs pray that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
 4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 5 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**

6 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 7 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 8 corporation, and Against Defendants MICHAEL WURCHE; and PHILOMENA  
 9 WURCHE, as individuals, inclusive)  
 10 (42 U.S.C. §12101, *et seq.*)

11 1. For injunctive relief, compelling defendants MICHAEL WURCHE; and  
 12 PHILOMENA WURCHE, as individuals, inclusive, to make the Shanghai Chinese Garden  
 13 restaurant, located at 471 Entrada Drive, Novato, California, readily accessible to and usable by  
 14 individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications  
 15 in policies, practice, eligibility criteria and procedures so as to afford full access to the goods,  
 16 services, facilities, privileges, advantages and accommodations being offered.

17 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed  
 18 the prevailing party; and

19 3. For such other and further relief as the court may deem proper.

20 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**  
 21 **EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1**  
 22 **AND 54.3, *ET SEQ.***

23 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 24 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 25 corporation, and Against Defendants MICHAEL WURCHE; and PHILOMENA  
 26 WURCHE, as individuals, inclusive)  
 27 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

28 1. For injunctive relief, compelling defendants MICHAEL WURCHE; and  
 PHILOMENA WURCHE, as individuals, inclusive, to make the Shanghai Chinese Garden  
 restaurant, located at 471 Entrada Drive, Novato, California, readily accessible to and usable by  
 individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for  
 each occasion on which plaintiffs were deterred from returning to the subject public  
 accommodation;

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3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5,  
if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

**III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE  
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE  
§19955, ET. SEQ.**

(On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
corporation, and Against Defendants MICHAEL WURCHE; and PHILOMENA  
WURCHE, as individuals, inclusive)  
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants MICHAEL WURCHE; and  
PHILOMENA WURCHE, as individuals, inclusive, to make the Shanghai Chinese Garden  
restaurant, located at 471 Entrada Drive, Novato, California, readily accessible to and usable by  
individuals with disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291; and

5. Such other and further relief as the court may deem just and proper.

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1 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**  
 2 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**  
 3 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**  
 4 **CODE §51, *ET SEQ.* (THE UNRUH CIVIL RIGHTS ACT)**

5 (On Behalf of Plaintiffs CRAIG YATES and DISABILITY RIGHTS ENFORCEMENT,  
 6 EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California public benefit  
 7 corporation and Against Defendants MICHAEL WURCHE; and PHILOMENA  
 8 WURCHE, as individuals, inclusive)  
 9 (California Civil Code §§51, 51.5, *et seq.*)

10 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and  
 11 for each occasion on which plaintiffs were deterred from returning to the subject public  
 12 accommodation;

13 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the  
 14 prevailing party;

15 3. General damages according to proof;

16 4. Treble damages pursuant to Civil Code §52(a);

17 5. For all costs of suit;

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6. Prejudgment interest pursuant to Civil Code §3291; and
7. Such other and further relief as the court may deem just and proper.

Dated: 1/8/09, 2009

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs CRAIG YATES and DISABILITY  
RIGHTS ENFORCEMENT, EDUCATION, SERVICES:  
HELPING YOU HELP OTHERS, a California public  
benefit corporation

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

Dated: 1/8/09, 2009

THOMAS E. FRANKOVICH,  
*A PROFESSIONAL LAW CORPORATION*

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiffs CRAIG YATES and DISABILITY  
RIGHTS ENFORCEMENT, EDUCATION, SERVICES:  
HELPING YOU HELP OTHERS, a California public  
benefit corporation

# Exhibit A



Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

November 13, 2008

Manager  
Shanghai Garden Restaurant  
471 Entrada Drive  
Novato, CA 94949

Dear Manager of Shanghai Garden:

Recently, I dined at the Shanghai Garden Restaurant. The food was quite good but use of the restroom was quite bad. You see I use a wheelchair and I couldn't get into the men's restroom because it's too small. So, I couldn't use it and I doubt other wheelchair users could.

This letter is written the same to the owner of the building and the manager of Shanghai Garden Restaurant. You see I think it's easy to make an accessible restroom. I think there are these things you could consider:

- One, combine the men's and women's restroom and make one unisex usable restroom;
- Two, close off the hallway at the kitchen and use the hallway as part of the men's restroom. Then make the men's restroom the unisex accessible, and women's restroom just unisex. \*See my diagram; or
- Third, use part of the big employee's storage room as a unisex restroom.

If you do #2, the employees will just walk around through part of the dining room.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Shanghai Garden once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this, please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.

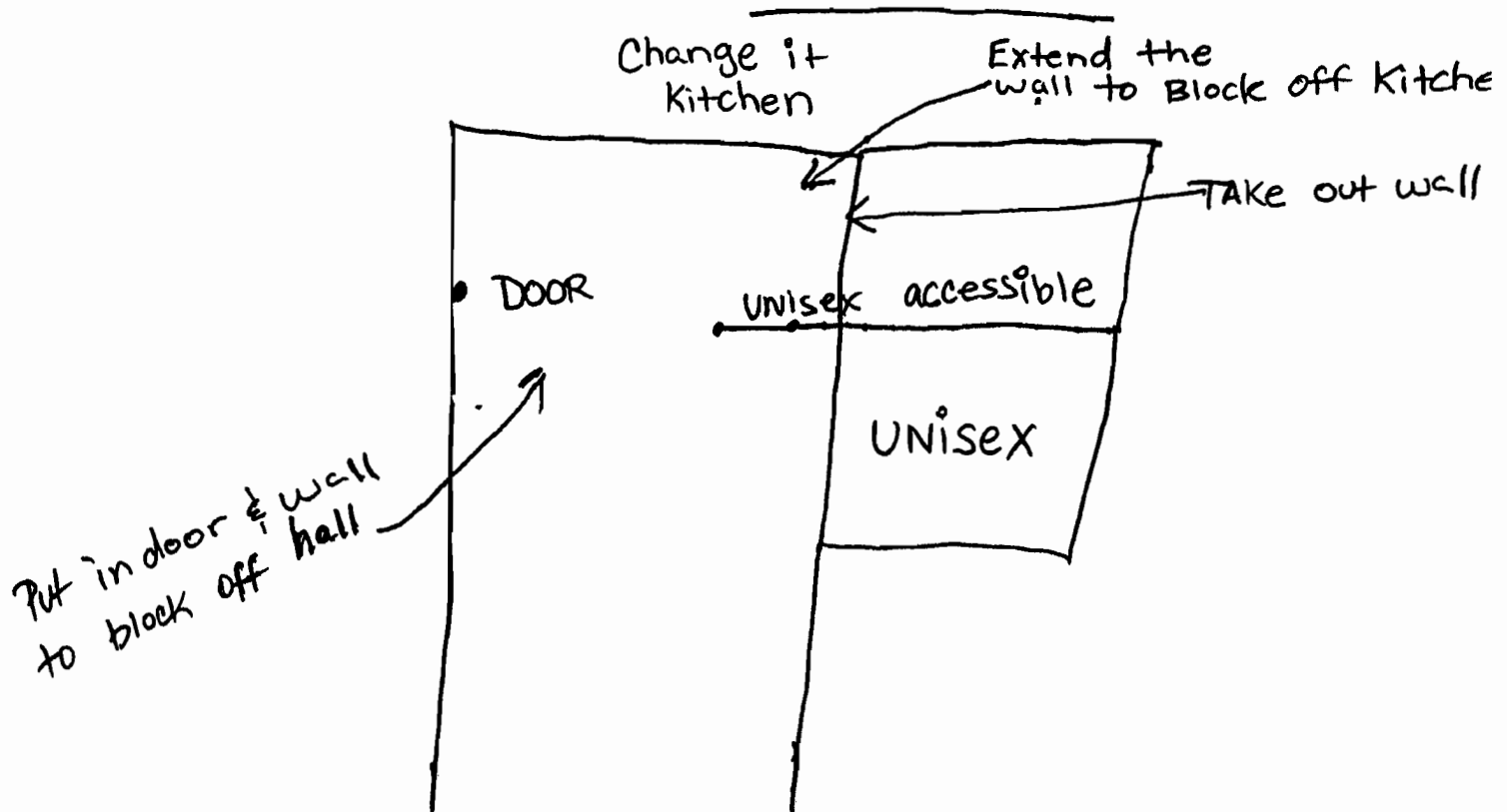
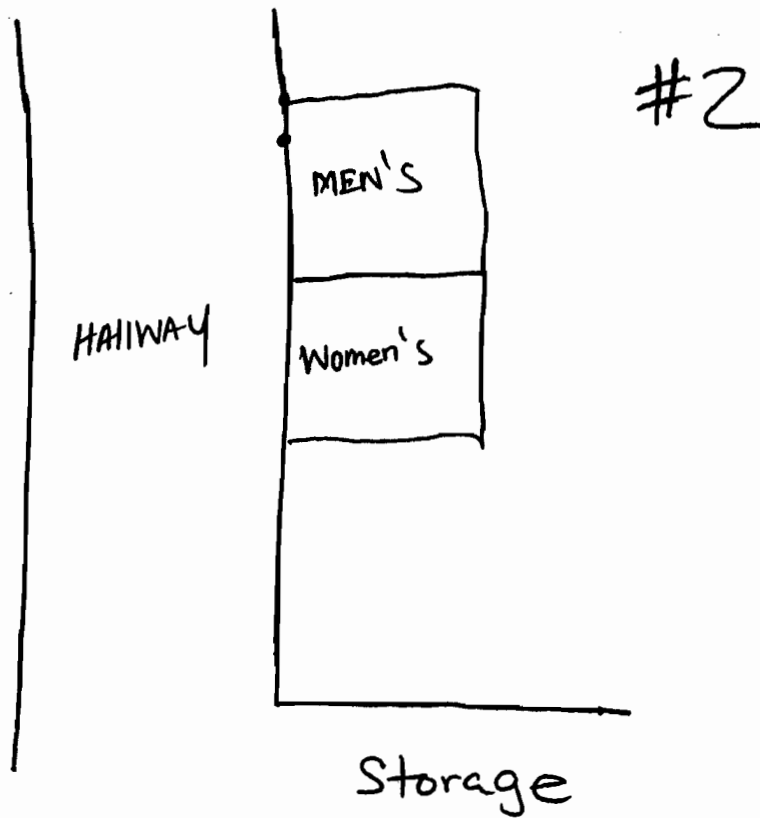
I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your accountant already has this information or knows about it.

Thank you for considering my request.

Thank You,

A handwritten signature in black ink, appearing to read "Craig Yates", written in a cursive style.

Craig Yates



Craig Yates  
1004 Los Gamos Road, Unit E  
San Rafael, CA 94903

November 13, 2008

Owner of Building  
Shanghai Garden Restaurant  
471 Entrada Drive  
Novato, CA 94949

Dear Owner of Building for Shanghai Garden:

Recently, I dined at the Shanghai Garden Restaurant. The food was quite good but use of the restroom was quite bad. You see I use a wheelchair and I couldn't get into the men's restroom because it's too small. So, I couldn't use it and I doubt other wheelchair users could.

This letter is written the same to the owner of the building and the manager of Shanghai Garden Restaurant. You see I think it's easy to make an accessible restroom. I think there are these things you could consider:

- One, combine the men's and women's restroom and make one unisex usable restroom;
- Two, close off the hallway at the kitchen and use the hallway as part of the men's restroom. Then make the men's restroom the unisex accessible, and women's restroom just unisex. \*See my diagram; or
- Third, use part of the big employee's storage room as a unisex restroom.

If you do #2, the employees will just walk around through part of the dining room.

I would really appreciate it if you would give me written assurance within the next two weeks that you will take care of these problems within the next three months. I'd like a written agreement. If you cannot do this would you forward my letter to whomever is in charge. I'd like to come back to Shanghai Garden once it's accessible to me. I may still come back before you do the work just because I like the place. If there is some problem doing this, please let me know. Would you please reply to my letter by FedEx to make sure I get your response?

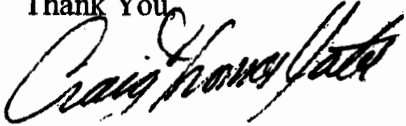
If you need information on exactly what you need to do, you can contact Pacific ADA and IT Center in Oakland at 1-800-949-4232, or the federal government at 1-800-514-0301. Either of them can send you a copy of the ADA and ADAAG codes, specifications, diagrams and manuals so that you can do the work yourself or have someone do it for you. You could also get a list of barriers common to places like yours and do your own inspection for barriers and remove them.



I was told that, if you make less than a million dollars per year and have a few employees, that you can get a \$10,000 tax credit to make your place accessible. That's a great deal. You can get information on this from the two places I mentioned above. You should talk to your accountant about it. Maybe your account already has this information or knows about it.

Thank you for considering my request.

Thank You,

A handwritten signature in black ink, appearing to read "Craig Yates", written in a cursive style.

Craig Yates

